SUPREME COURT OF THE UNITED STATES.

No. 312. .

HANNIBAL GREEN, PLAINTIFF IN ERROR,

vs.

MORRIS S. VAN BUSKIRK ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.
(REMITTITUR.)

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1 In Court of appeals.

Supreme court.

MORRIS S. VAN BUSKIRK and OTHERS, respondents,
ag't
HANNIBAL GREEN, appellant.

GENTS: Please take notice that the defendant appeals to the court of appeals from the judgment of the general term of the supreme court, entered in this action in favor of the plaintiffs, on the 20th day of September, A. D. 1860, affirming the judgment entered herein on the 21st day of July, A. D. 1859, with $180 31 costs of appeal.

Dated Oct. 20, 1860.

Yours, &c.,

SEYMOUR & VAN SANTVOORD,
Att'ys for Def't.

To Messrs. GALE & ALDEN, Esq., *Pl'ff's' Att'ys, and*
JAS. THOMAS DAVIS, Esq.,
Clerk of Rensselaer County.

Filed October 20th, 1860.

2 Supreme court.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson,
ag't
HANNIBAL GREEN.

To John P. Ball, esq., clerk of Rensselaer county, and Gale & Alden, esq's, plaintiffs' attorneys:

Take notice that the defendant appeals to the supreme court at general term, from the judgment of the special term in this action, entered in the office of the clerk of Rensselaer county, on the 21st day of July, 1859, in favor of the plaintiffs against the defendant, for $3,221 06 damages and costs.

Dated August 11th, 1859.

Yours, &c.,

SEYMOUR & VAN SANTVOORD,
Att'ys for Def't.

3 *Summons.*

Supreme court, Rensselaer county.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, plaintiffs,
ag't
HANNIBAL GREEN, defendant.

To the above defendant:

You are hereby required to answer the complaint in the supreme court of the above plaintiffs, which is hereunto annexed, and to serve a copy of your answer on us, at the city of Troy, within twenty days after the service hereof upon you, exclusive of the day of service; and take notice that if you fail to answer said complaint, as hereby required, the said plaintiffs will take judgment against you for the sum of ten thousand dollars, and interest thereon, from November 6th, 1857, besides the costs of this action.

GALE & ALDEN,
Plaintiffs' Attorneys, Troy, N. Y.

Dated Troy, June 30th, 1858.

Complaint.

Supreme court.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, plaintiffs,
ag't
HANNIBAL GREEN, defendant.

Rensselaer county is the place of trial.

Said plaintiffs complain of said defendant, and aver that on or about November 6th, 1857, said defendant, at the city of Chicago,
4 in the State of Illinois, wrongfully took and carried away thirty-nine chilled-iron safes and two sheet-iron safes, belonging to the said plaintiffs, and of the value of ten thousand dollars, and have hitherto kept the same; that said plaintiffs have at different times between November 6th, 1857, and June 26th, 1858, demanded said safes of said defendant, but that said defendant at all of said times refused the same; that said defendant has since then, and on or about June 26th, 1858, sold said safes, and converted the same to his own use.

Wherefore said plaintiffs demand judgment against said defendant for the sum of ten thousand dollars, and interest thereon, from November 6th, 1857, besides costs.

GALE & ALDEN,
Pl'ffs' Att'ys, Troy, N. Y.

Answer.

Supreme court.

MORRIS S. VAN BUSKIRK and OTHERS *ag't* HANNIBAL GREEN.

The defendant, for answer to the complaint of the plaintiffs:

First. Denies each and every allegation therein said complaint contained.

Second. And for a second and further defence, the defendant says, that previous to and at the time of the alleged taking and carrying away of said safes, they, the said safes, were the property of John W. Bates and John B. Griffin, residents of the State of New York, and said safes were at Chicago, in the county of Cook and State of Illinois; that said Bates & Griffin, at that time, were justly indebted to the defendant, Hannibal Green, in the sum of one thousand one hundred and twenty dollars eighty-one cents, or thereabouts; that the said defendant, on due proof being thereto made and produced, and under and pursuant to the laws of the State of Illinois, and in full compliance therewith, caused an attachment to be issued in due form of law, out of the Cook county court of common pleas, a court of record of the said State of Illinois, having jurisdiction of said process, and of the suit instituted thereon and of the subject matter thereof, directed to the sheriff of the said county of Cook, and commanding him to attach so much of the estate, real or personal, of said Bates & Griffin, as should be sufficient to satisfy said sum of $1,120 81 and costs, and such estate so attached in his hands to secure, so as to provide that the same might be liable to further proceedings thereupon according to law, at a court to be held at Chicago for the said county of Cook, upon the day of (then) next, so as to compel the said John W. Bates and John B. Griffin to appear and answer the complaint of the said plaintiff; that said writ of attachment was thereupon, to wit, on the 6th November, 1857, delivered to John L. Wilson, the sheriff duly elected and qualified to serve as such, of said county of Cook; and that said sheriff thereupon, to wit, on said 6th of November, 1857, levied upon and took into his possession the said safes as the property of said Bates & Griffin, to wit: at said city of Chicago, and within the jurisdiction of said court, which is the same taking and carrying away of said property alleged in said complaint.

That said sheriff thereupon returned into court said writ of attachment, with his certificate of such levy duly indorsed thereon, on or about the 2d December, 1857.

That such proceedings were thereupon had, that judgment of said court was duly given and made in said suit on the 9th day of
6 June, 1858, for the sum of $1,168 30 and costs, and an execution was issued to said sheriff upon said judgment, which judgment was entered in said county of Cook, and the said property so attached, was, after due notice by said sheriff, and according to the laws of the State of Illinois, duly sold at public auction to the highest bidder, to satisfy said execution, which is the same selling of said safes and converting the same mentioned in said complaint, and on or about the time in said complaint alleged.

SEYMOUR & VAN SANTVOORD,
Def'ts Atty's.

Supreme court, Rensselaer county.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, plaintiffs,
ag't
HANNIBAL GREEN, defendant.

A trial by jury in this action having been waived by the parties, by the oral consent of the attorneys for the respective parties, in open court, and entered in the minutes of the court, and the action having been tried by the court at the February term of said court, held in and for the county of Rensselaer, on the 19th day of February, 1859, and duly considered. The court decides, that the plaintiffs in the above action recover from the said defendant the sum of three thousand and ninety-nine dollars and nineteen cents, ($3,099 19,) besides costs.

H. HOGEBOOM.

Dated July 15th, 1859.

7 Supreme court, Rensselaer county.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, plaintiffs,
ag't
HANNIBAL GREEN, defendant.

A trial by jury in this action having been waived by the attorneys for the respective parties in open court, and entered in the minutes of the court, and a trial of the issues herein being had on the 19th day of February, 1859, before the court, the honorable Henry Hogeboom, justice presiding, whose decision in writing had been filed with

the clerk of the county of Rensselaer, whereby judgment is ordered for the plaintiffs for three thousand and ninety-nine dollars and nineteen cents with costs. Now, on motion Gale & Alden, plaintiffs' attorneys, it is hereby adjudged that the aforesaid plaintiffs recover of the defendant aforesaid the said sum of $3,099 19, with one hundred and twenty-one dollars and eighty-seven cents, costs, disbursements, and interest on the recovery, amounting in the whole to the sum of ($3,221 06,) three thousand two hundred and twenty-one dollars and six cents.

JOHN P. BALL, *Clerk.*

July 21st, 1859.

Supreme court.

MORRIS VAN BUSKIRK and OTHERS *ag't* HANNIBAL GREEN.

This was an action brought to recover damages for the taking and carrying away of thirty-nine chilled-iron and two sheet-iron
8 safes, alleged to have been the property of the plaintiffs, at Chicago, in the State of Illinois. The pleadings in the case are as set forth in the judgment roll. The issue so joined came on for trial at the circuit court held at the city of Troy, on the 1st Monday of February, 1859, before the Hon. Henry Hogeboom, one of the justices of the court, and was tried by said justice without a jury.

Upon the trial of said cause, the following admission of facts agreed upon and stipulated between the parties was read in evidence:

Stipulation.

Supreme court.

MORRIS S. VAN BUSKIRK and OTHERS *ag't* HANNIBAL GREEN.

We hereby admit the following facts, viz: On the 3d day of November, 1857, John W. Bates was the owner of forty-one iron safes, which were then in Chicago, in Cook county, in the State of Illinois. Said safes never were in reality the property of one Lorenzo Stowell.

Said Bates, and the several parties to this action, except said Woodbury, who resides in Ohio, then were, and still are, residents and citizens of the State of New York.

The defendant had previously during that year, sold to said Bates, iron which was used in the manufacture of safes, for which he was indebted to the defendant in the sum of $1,120 81, on the fifth day November, 1857.

On the 5th day of November, 1857, the defendant, by his attorneys at Chicago, by process of attachment duly issued on that day, in pursuance of the laws of Illinois, out of the court of common pleas of Cook county, Illinois, in an action in said court having jurisdiction to

issue said process, and brought by said defendant against said Bates, upon said debt duly attached, and levied upon said safes in
9 the said city of Chicago as the property of said Bates, and such proceedings were afterwards had in said action, and in furtherance of said attachment, and in said court, that on the 9th day of June, 1858, said defendant recovered judgment against said Bates, by default, for $1,168 30 damages and costs, and afterwards duly sold said safes under and to satisfy an execution duly issued out of said court upon said judgment, and said proceedings were regular.

On the 3d day of November, 1857, said Bates executed and delivered at the city of Troy, in the State of New York, to the plaintiffs a written instrument of which a copy is hereto annexed.

The facts recited in said instrument down to the words "now in consideration of" are true, except the date thereof is not the day of its execution, and said attached safes are a part of the property included therein.

The said plaintiffs proceeded without delay to take possession under said instrument, of the property included therein, but were prevented from taking possession of said attached safes by said attachment having been levied thereon, previously to any demand made by plaintiffs at Chicago, or elsewhere, of said safes. They took possession of the residue of said property, but not before said attachment.

At the time said safes were attached, neither said defendant nor his attorneys had any knowledge or information whatever of said instrument, or of any transfer of said safes to said plaintiffs, or by said Bates. Soon after the attachment was levied, and before any further proceedings were had in the action against Bates, the plaintiffs herein were notified of the attachment and levy under it, and the defendant herein was notified of said instrument, and the plaintiffs thereby claimed said safes.

10 Both before the recovery of said judgment and after the sale under execution the plaintiffs herein demanded of the defendant herein the attached safes, and the same were refused. The facts above admitted may be severally introduced by either party on the trial of this action.

The cases of Martyn *vs.* Dryden *et al.*, 1st Gilman's Reports, and Burnell *et al. vs.* Robertson, 5 Gilman's Reports, contain an exposition of the law of the State of Illinois and said cases, and the statutes of Illinois may be read on the trial from the printed volumes as establishing the fact that the law of Illinois is in accordance therewith.

GALE & ALDEN, *Pl'ffs' Att'ys.*
SEYMOUR & VAN SANTVOORD,
Def'ts Att'ys.

The instrument above referred to, and which should have been here inserted, is set forth on page 28, and forms part of this case.

The plaintiffs, further to maintain the issue on their part, introduced the following testimony:

Edward Fry, a witness for plaintiffs, who being duly sworn, testified: I lived in Chicago in October and November, 1857; I saw the

safes in controversy, and am acquainted with them; B. P. Pratt had charge of the store where the safes were deposited during the months of October and November, 1857; I was in his employ in selling safes, and that was the business, selling Lillie's safes; I am acquainted with the market price of safes at that time; I have the list prices of the safes; the market value of the safes at that time in Chicago was the printed list prices, with freight added, from the factory at Troy to Chicago; the prices varied according to size; by freight I mean to include cartage; the gross amount of the list prices of these safes is $6,960; there was damage of $414 50 to some of the safes, which leaves the amount $6,545 50; the freight on the safes in question is $905 15; these safes were manufactured and sold under a
11 patent called Lillie's patent, as it then existed. I entered in Pratt's employ about the 20th September, 1857; I know Lorenzo Stowell; Pratt had the property in possession from that time until after the attachments were issued; during this time Pratt claimed to hold the property for Lorenzo Stowell; Stowell was in and about the store during this time frequently; both together claimed that Stowell was the owner of the property.

The defendant's counsel duly objected to the admission in evidence of the declarations of Pratt, or of the joint declarations of Pratt and Stowell, but the court overruled the objection and admitted the evidence, to which defendant's counsel excepted.

On his cross-examination the witness said: Previous to September, 1857, I had not bought or sold safes in Chicago; I had been keeping books in Dubuque previous to that time, and came to Chicago about the 20th; I had no knowledge of the market value of safes in Chicago prior to that time; I was there from that time until 1st May, 1858; I did not sell any safes myself after the attachments; there were safes sold there after the attachments, which I delivered; there were probably five safes sold after the attachments; there were also five sold between 20th September, 1857, and the attachments; I have seen about ten safes sold there; the prices I have given are the list prices furnished to agent; in all the safes I have seen sold we got the list prices with freight added, and from these prices commissions were allowed to the agents; I don't know what the commissions were; I consider these prices their value at retail, but I would not be willing to give that price to sell again; I do not consider the cash value of the forty-one safes in the Chicago market to be that value; I consider that we always made a discount of five per cent. below these prices; it is five per cent. below list prices, with freight added;
12 I don't consider these forty-one safes worth in the Chicago market the list prices less five per cent. in November, 1857, with freight added, because there were some imperfect ones; I should consider the safes worth eighty cents on the dollar of list prices, with freight added; when I speak of eighty per cent. I speak of the value to a person to buy and sell out again; my eighty per cent. estimate would be the wholesale price; I think the whole lot could not have been sold on the *the* day of attachments for more than eighty per cent. of the list price; there were no large sales; they were sold in market

by single safes, and by that mode they were worth the list price five per cent. off, with freight added.

John W. Bates, a witness for plaintiffs, testified: I was proprietor of the World's Safe Company, and manufactured safes called Lillie's safes; I was the only manufacturer of that kind of safe; I was in Chicago in September, 1857; the safes were sold in various markets; I suppose I know the market value of these safes at that time in Chicago; I should say they were worth ninety cents on the dollar of list prices, with freight to be added; I make that deduction of ten per cent. for commissions I allowed to agents; (par value would be the fair market value to the purchaser, and five per cent. off the list price was allowed for cash, with freight added.)

On his cross-examination the witness testified: I had sold safes in Chicago about four years; I had sold an average of from fifty to seventy-five safes a year at Chicago, prior to September, 1857; I should think we had sold more than two hundred safes in Chicago for the four years; I can't say whether all were at the list prices; Lewis Lillie had the charge of the business here; I never sold any myself; I had my knowledge of value from my agents at Chicago, from whom I got returns of sales; as a general thing Lillie had the management.

13 The plaintiffs here introduced and read in evidence the instrument dated November 2d, 1857, set forth in the foregoing stipulation.

The plaintiffs here rested their case, whereupon the defendant called as a witness—

Lewis Lillie, who being sworn, testified: I am patentee of Lillie's safes; I was agent in establishing most of the agencies through the western country; I gave my attention to the business when at home; in 1857 I was at Chicago several times; I made sales there myself; had been engaged in making and selling since winter of 1850 and '51; I was in Chicago in December, 1857; I know the forty-one safes in controversy, and they were made at our works; the safes were in the store I rented for Mr. Bates, where Pratt was; the safes might have been worth sixty per cent. of the list prices, without freight; that is my best estimate of their fair value; these safes were of different sizes and numbers; Bates is said to have failed the last of August or 1st of September, 1857.

On his cross-examination he said: I made sales of safes in Chicago in 1857, before the attachment; I generally got list prices with freight added; occasionally we sold safes lower; that was the fair market price prior to August or September, 1857, when everything broke down; the sale of safes was then entirely suspended; I should think that I left Chicago about 17th September, 1857; I have no personal knowledge that sales of safes were not made between September 17 and November 5, 1857; I offered eighty per cent. on *on* the list prices in February, 1858; I purchased the safe works, and our trade had been at the west; I offered to take the safes at eighty cents for the purpose of getting control of the market; I offered more than they

were worth; when I speak of 60 per cent. I mean by wholesale; I mean the wholesale price.

On his further re-direct examination he said: I guess the
14 retail prices have been kept up; if they could have been sold at all the safes would have been worth at retail the list prices, with five per cent. off for cash and with freight added; I don't know as any were sold; after September, 1857, I knew of no sales; business was stopped; there were no returns of sales made to me; I was agent of Bates up to the 2d November, 1857; the ordinary commission to agents on the retail prices was ten per cent.; this did not include insurance and advertising; I discount to my agents twenty-five per cent. on my sales for agency, insurance, and other charges.

Defendant offers in evidence the statutes and books referred to in the stipulation, which are considered as read in evidence.

The evidence here closed on both sides, whereupon the said justice after hearing the arguments of counsel and deliberating thereon, decided the issues of law and fact in favor of the plaintiffs, and assessed their damages at the sum of $3,099 19, on which decision judgment for the plaintiffs was duly entered on the 21st July, 1859, for $3,221 06 damages and costs.

The following are the conclusions of fact and of law as found by said court:

The facts found by said court are those set forth in said stipulation.

Also the fact that the value of the safes taken at the time of the levy was the sum of $7,102 65, which sum, with interest added from November 5, 1857, to date of judgment, is to be apportioned as damages between this defendant and Warren and Tillinghast, (who under the same circumstances and at the same time with this defendant, levied an attachment on said safes,) in proportion to their respective judgments, that is to say, judgment of defendant Green, $1,168 30; do. of Warren and Tillinghast, $1,826 77.

Also the fact that at the time of the execution by Bates
15 of the instrument dated November 2nd, 1857, said safes were in possession of Lorenzo Stowell, under claim of ownership by him.

Also the fact that the instrument dated November 2nd, 1857, was made and executed in good faith, and without any intent to defraud the said defendant or any other person.

As conclusions of law from the fact so found, the court held:

First. That the instrument in writing from John W. Bates to said plaintiffs was not fraudulent in law or void, but that the same was and is in all respects a legal and valid instrument, and an absolute transfer of the property to the plaintiffs subject to their liability to account for any surplus which there might be over and above the payment of their debts.

Second. That the assignment or sale or transfer of said safes from Bates to said plaintiffs was not fraudulent in fact or in law, but valid and operative.

Third. That by the law of the State of New York, the title to the safes passed on the execution and delivery of the instrument under

the facts found in the case, and overreached the subsequent attachment in the State of Illinois, and actual prior possession under it at the suit of the defendant, although he was a creditor, having a valid and fair debt against Bates, and had no notice of the previous assignment or sale.

Fourth. That the law of the State of New York is to govern the transaction and not the law of the State of Illinois where the property was situated.

Fifth. And that the plaintiffs are therefore entitled to recover against the defendants the market value of said safes at the time of attachment levied, that is to say, the retail price less five per cent. with freight added, together with interest upon such value.

And the said defendant within the time required by statute makes and files his exceptions to such decision and finding of said
16 court, and to said judgment, as follows:

First. The defendant excepts to the finding of the facts that the value of said safes is as found by said court, and insists that such finding is against the evidence and such damages excessive.

Second. The defendant further excepts to each and every of the conclusions of law so found by said court.

Third. The defendant excepts to the said decision and judgment of the court, on the ground, that the same are contrary to law; that said assignment or instrument mentioned in said stipulation is upon its face and in law fraudulent and void; that it conveyed no title to the plaintiffs as against the defendant's title under his attachment actually levied; that the rule of damages adopted by the court is erroneous; that the rights of the parties must be determined by the law of the State of Illinois and not by the law of the State of New York, and therefore the plaintiffs cannot recover, it being admitted as a fact that by the laws of Illinois under the circumstances of this case, the title of the attaching creditor is superior.

That the plaintiffs have shown ownership or right of possession of these goods superior to or equal to that of the defendant.

And that the defendant committed no trespass or damage to the plaintiffs in attaching and carrying away the property or refusing to deliver it to plaintiffs.

SEYMOUR & VAN SANTVOORD,
Deft's Att'ys.

17 This instrument, made this second day of November, 1857, between John W. Bates, of the village of Lansingburgh, N. Y., of the first part, and Morris I. Van Buskirk and Edward P. Picket, (composing the firm of Van Burkirk & Pickett,) of Lansingburgh, Jason C. Osgood, George T. Blair, D. Adams, Edward Ogden, Francis A. Fales, and Isaac N. Haight, each of Troy; J. L. Hatch, of New York, A. H. Wood, of Watertown, N. Y., and B. B. Woodbury, of Ohio, and H. B. Sisson, of Bristol, in Ontario County, N. Y., of the second part, witnesseth as follows:

Whereas said Bates, in course of his business of manufacturing iron safes, under the name of the World's Safe Company, has a great

number of said safes in various places which yet remain unsold, and there are due or to become due to said Bates divers sums of money from sales of safes manufactured as aforesaid; and whereas, also, said Bates is indebted to the said several parties of the second part hereto as follows: (Here follows a statement of Bates' indebtedness to the several parties of the second part.)

Now in consideration of the said several items of indebtedness, and for securing the payment of the same, and protecting the said several parties of the second part against any loss on account thereof, the said Bates does hereby sell, assign, and set over to the said parties of the second part all and every of the said safes which are now owned by the said Bates, except those within the State of New York, and also all the said sums due or to become due, as aforesaid, from sales of safes and the accounts therefor, and the evidences thereof, except such notes and securities as have come to the hands of said Bates or of Lewis Lillie, and except accounts and negotiable paper for safes sold by the agents within the State of New York for selling said safes; and the said Bates does hereby authorize the said parties of the second part to take possession and control of the said safes hereby sold to them, and to sell the same at the usual prices at which such safes have been sold by said Bates, or at such reasonable prices as either said Bates or said Edward P. Pickett shall in writing approve. And also to collect the said sums of money and accounts and evidences of debts hereby transferred to the said parties of
18 the second part, and after paying the reasonable costs and expenses of such sales and collections from time to time, to apply the residue of the proceeds derived therefrom in payment of the aforesaid debts of said Bates, pro rata, according to the respective amounts thereof, until, if such residue shall suffice therefor, the said debts shall be fully paid.

And whereas a pretended sale has been lately made by Lewis Lillie to Lorenzo Stowell of certain safes belonging to said Bates, and said sale was made without the knowledge or assent of said Bates, and is deemed by said Bates to have been mala fide, it is intended hereby that the safes so sold to said Stowell, and all the interest of said Bates therein, shall be deemed a part of the property hereby sold and assigned to the said parties of the second part; and nothing herein is intended to ratify or adopt any sales of safes which (sales) have been made by said Lewis Lillie, or any other agent of said Bates, except actual and bona fide sales thereof.

In presence of—

JAMES W. MILLS.

[L. S.] JOHN W. BATES.

19 At a general term of the supreme court, held for the State of New York in the third judicial district of said State at the capitol, in the city of Albany, on the 14th day of September, 1860.

Present: Hon. George Gould, Hon. Henry Hogeboom, Hon. Rufus W. Peckham, justices.

MORRIS S. VAN BUSKIRK and OTHERS
ag't
HANNIBAL GREEN.

This cause having been called in its regular order on the calendar, and counsel for the respective parties heard, and due deliberation had thereon, it is ordered and adjudged that the judgment rendered at the circuit court in the above-entitled cause be, and the same is hereby, affirmed.

Copy.

R. BABCOCK, *Clerk.*

Supreme court.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, respondents,
ag't
HANNIBAL GREEN, appellant.

Judgment, September 20, 1860. This cause having been brought before the general term of this court, on appeal from a judgment entered therein on the 21st day of July, 1859, in the Rensse-
20 laer county clerk's office, in favor of said respondents against the said appellant for $3,221 06 damages and costs.

And the said appeal having been heard before said general term, and the decision of the court thereupon having been duly filed, whereby the said judgment so entered as aforesaid and appealed from was in all things affirmed, and the costs of the respondents on said appeal having been duly adjusted at $180 31 by the clerk of this court, now, on motion of Gale and Alden, attorneys for said respondents, it is hereby adjudged that the aforesaid judgment be, and the same is in all things, affirmed, and that the said respondents recover of and from the said appellant, Hannibal Green, the sum of $180 31 for their costs and disbursements in said appeal.

J. THOMAS DAVIS, *Clerk.*

Filed Sept. 20, 1860, at 11h. 20m. a. m.

STATE OF NEW YORK. *Rensselaer County, ss:*

I, J. Thomas Davis, clerk of said county, do hereby certify that I have compared the foregoing decision and order of the supreme court of the third district at general term, and the judgment roll thereon, containing the within case and exceptions, and the notice of appeal therefrom to the court of appeals, with the originals on file in this office, and that they are correct transcripts therefrom and of the whole of said originals.

In testimony whereof have hereunto set my hand and affixed the seal of said county this 22d day of December, 1860.

[L. S.] J. THOMAS DAVIS, *clerk.*

21 STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 22d day of December, in the year of our Lord one thousand eight hundred and sixty-five, before the judges of said court.

Witness: Hiram Denio, esquire, chief judge.

[L. S.] F. A. TALLMADGE, *Clerk.*

MORRIS S. VAN BUSKIRK and OTHERS, resp'ts, *ag't* HANNIBAL GREEN, app'l't.

Be it remembered, that on the 22d day of December, in the year of our Lord one thousand eight hundred and sixty, Hannibal Green, the appellant in this action, came here into the court of appeals, by Seymour and Van Santvoord, his attorneys and counsel, and filed in the said court his notice of appeal and return thereto from a judgment of the supreme court.

And Morris S. Van Buskirk and others, the respondents in said action, afterwards appeared in said court of appeals, by Gale and Alden, their attorneys and counsel, which said notice of ap-
22 peal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, after having heard this action argued by Mr. A. J. Parker and Mr. D. L. Seymour, counsel for the appellant, and by Mr. John B. Gale, counsel for respondents, and, after due deliberation having been had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed. And it was further ordered and adjudged that the respondents recover against the appellant costs of appeal in this court.

It was also ordered that the record and proceedings be remitted to the supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid by them given in the premises, are, by the said court of appeals, remitted into the supreme court of the State of New York before the justices thereof, according to the form of the statute in such case
23 made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justice thereof, &c.

CORS. TEN BROECK,
Dep'y Clerk.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, December 23d, 1865.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached.

CORS. TEN BROECK,
Dep'y Clerk.

24 Supreme court, State of New York.

MORRIS S. VAN BUSKIRK, EDWARD P. PICKETT, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, plaintiffs and respondents,
ag't
HANNIBAL GREEN, defendant and appellant.

FEBRUARY 16, 1866.

On filing the remittitur herein of the court of appeals, whereby it appears that the judgment herein of the supreme court has been by the judgment herein of the court of appeals in all things affirmed, with costs to said respondent against said appellants of the appeal herein to the court of appeals.

Now, on motion of Gale and Alden for said respondents, ordered that the judgment in this action of the court of appeals be and become the judgment of this court, and that the said respondents recover of the said appellant the sum of four thousand nine hundred and fifty and $\frac{75}{100}$ dollars as the amount of the judgments for damages and costs heretofore rendered in the supreme court herein, with interest thereon, and the further sum of two hundred and
25 eighty-nine and $\frac{40}{100}$ dollars for the costs of said respondents on the appeal herein to the court of appeals, amounting in the whole to five thousand two hundred and forty and $\frac{15}{100}$ dollars, ($5,240 15.)

J. THOMAS DAVIS, *Clerk.*

Filed Feb. 16th, 1866, at 10h. 45m. a. m.

26 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of New York, before you or some of you, having thereto been remitted by the court of appeals of said State of New York after decision rendered in said court of appeals by the judges thereof, being the highest court of law or equity of the said State in which a decis-

ion could be had in the said suit between Morris S. Van Buskirk, Edward P. Pickett, Jason C. Osgood, George T. Blair, Darwin Adams, Edward Ogden, Francis A. Fales, Isaac N. Haight, James L. Hatch, A. H. Wood, B. B. Woodbury, and Horatio B. Sisson, plaintiffs, and Hannibal Green, defendant, wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said Hannibal Green, as by his complaint appears.

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected,
27 the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 16 day of February, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[L. S.] AUGUSTUS N. BOYCE, *Clerk.*

AMASA J. PARKER,
Attorney, No. 55 State st., Albany, N. Y.

Filed Feb. 20, 1866.

28 STATE OF NEW YORK,
Rensselaer County, Clerk's Office.

I, J. Thomas Davis, clerk of said county, do hereby certify that I have compared the foregoing copies, judgments, records, and proceedings with the originals on file in this office, and that they are correct transcripts therefrom, and of the whole of said originals, and the same are hereby returned, with the annexed writ of error, as thereby directed, into the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed my official seal this 12th day of October, 1866.

[SEAL.] J. THOMAS DAVIS, *Clerk.*

[5-ct. stamp, cancelled.]

Supreme Court of the United States.—Of December term, 1866.

HANNIBAL GREEN, plaintiff in error,
vs.
MORRIS S. VON BUSKIRK and others, defendants in error.
} In error.—No. 312.

Afterwards to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Hannibal Green, by Amasa J. Parker, his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid there is manifest error in this, to wit: that said judgment was given in violation of section one of article four of the Constitution of the United States, which provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State," and also in violation of the ninth section of the act of Congress passed May 26, 1790; and that the construction of said clause of the Constitution, and of said section of said act of Congress were drawn in question, and the decision was against the title, right, and privilege claimed under the same by the plaintiff in error, it being made to legally appear in behalf of the plaintiff in error before the court which rendered the said judgment that the property for the taking and converting of which the aforesaid action was brought against the said plaintiff in error by the said defendants in error, was, by and according to the laws of the State of Illinois, lawfully taken and sold by the sheriff in behalf of the plaintiff in error under and by virtue of certain judicial proceedings had in the State of Illinois in and before a court of competent jurisdiction, according to the laws of said State, and under and by virtue of a judgment in favor of the plaintiff in error regularly and legally made and entered in said court in the State of Illinois, all of which judicial proceedings were duly proved and were claimed by said plaintiff in error under and according to the provisions aforesaid of the Constitution of the United States, and of said law of Congress, to be entitled to full faith and credit in the State of New York, and to be a full justification of the taking and converting of the property, for which taking and converting this action was brought. There is also error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid given was given for the said defendants in error against the plaintiff in error.

Whereas by the laws of the land and the Constitution of the United States the said judgment ought to have been given for said plaintiff in error against the said defendants in error.

And the said Hannibal Green, plaintiff in error, prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment aforesaid, &c.

AMASA J. PARKER, *Attorney.*

Filed 13 December, 1866.

O

Denial of error.

Supreme Court of the United States of December term, 1866.

HANNIBAL GREEN, plaintiff in error,
vs.
MORRIS S. VAN BUSKIRK AND OTHERS, defendants in error. } In error.

And hereupon, afterwards, to wit, on the first Monday of December, in the same term, before the justices of the Supreme Court of the United States at the Capitol, in the city of Washington, come the said Morris S. Van Buskirk and others, defendants in error herein, by their attorney, John B. Gale, and say that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and they pray that the court now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid given may be in all things affirmed, &c.

JOHN B. GALE,
Attorney for Defendants in Error, Troy, N. Y.

Endorsed: No. 31. Supreme Court of the United States. Hannibal Green *vs.* Morris S. Van Buskirk *et al.* John B. Gale, att'y for def't in error. Filed Jan'y 29th, '68.